

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

LINDA MICHAEL,)
)
)
Plaintiff,)
)
-vs-) Case No. CIV-10-1064-F
)
MILLICENT NEWTON-EMBRY,)
WARDEN, et al.,)
)
Defendants.)

ORDER

Plaintiff, Linda Michael, is a state inmate suing under 42 U.S.C. § 1983 and state law. Plaintiff's claims involve:

- invalidity of a disciplinary conviction,
- invalidity of Okla. Stat. tit 57 § 566.3, and
- failure to supply protection in violation of the Eighth Amendment.

Defendants, Millicent Newton-Embry, Angela Johnson, Richard Arnold, John Carothers, Debbie Morton, Ola Onajobi, Thomas Uzuegbunem, Sally Taylor, Dennis Griffith, Kathy Conrad, Karen Johnson, the State of Oklahoma, and the Office of the Attorney General, have moved for dismissal of plaintiff's claims, and plaintiff has moved for summary judgment on her claims. United States Magistrate Judge Robert E. Bacharach has issued a Report and Recommendation on the Defendants' Motion to Dismiss and a Report and Recommendation on the Plaintiff's Motion for Summary Judgment. Magistrate Judge Bacharach recommends that defendants'

dismissal motion be granted in part and denied in part and that plaintiff's summary judgment motion be overruled.

In connection with the parties' respective dispositive motions, plaintiff also moved for a "waiver" of the duty to exhaust her claim involving a failure to supply protection. Magistrate Judge Bacharach has issued a Report and Recommendation Regarding the Plaintiff's Motion to Waive Exhaustion of Administrative Remedies, wherein he has recommended that plaintiff's motion be denied.

Plaintiff has filed an objection to each report and recommendation issued by Magistrate Judge Bacharach. Pursuant to 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Having done so, the court agrees with the analysis of Magistrate Judge Bacharach in regard to the parties' respective motions. The court finds plaintiff's objection to each report and recommendation to be without merit. Therefore, the court accepts, adopts and affirms the recommended rulings of granting defendants' dismissal motion in part, overruling plaintiff's summary judgment motion, and denying plaintiff's motion to waive exhaustion of administrative remedies.

Defendants have not filed an objection to the Report and Recommendation on the Defendants' Motion to Dismiss to the extent it recommends that defendants' dismissal motion be denied in part. With no objection being filed within the time prescribed in the report and recommendation and no request for an extension of time to object being filed, the court accepts, adopts and affirms the recommended ruling that defendants' dismissal motion be denied in part.

IT IS THEREFORE ORDERED that

1. The Report and Recommendation on the Defendants' Motion to Dismiss (doc. no. 62) issued by United States Magistrate Judge Robert E. Bacharach on June 15, 2011 is **ACCEPTED, ADOPTED** and **AFFIRMED**. Defendants' Motion

to Dismiss Plaintiff's Amended Complaint (doc. no. 46), filed April 4, 2011, is **GRANTED in part** and **DENIED in part**. The following claims of plaintiff, Linda Michael, are **DISMISSED WITHOUT PREJUDICE**:

- the claims against the State of Oklahoma/Office of Attorney General regarding the constitutionality of Okla. Stat. tit. 57 § 566.3,
- the monetary damage claims against Millicent Newton-Embry, Angela Johnson, Richard Arnold, John Carothers, Debbie Morton, Ola Onajobi, Thomas Uzuegbunem, Sally Taylor, Dennis Griffith, Kathy Conrad, and Karen Johnson in their official capacities, and
- the personal capacity claims against Ms. Newton-Embry, Ms. A. Johnson, Mr. Arnold, Mr. Carothers, Ms. Morton, Mr. Onajobi, Mr. Uzuegbunem, Ms. Taylor, Mr. Griffith, Ms. Conrad, and Ms. K. Johnson for damages based on a denial of equal protection.

2. The Report and Recommendation on the Plaintiff's Motion for Summary Judgment (doc. no. 63) issued by United States Magistrate Judge Robert E. Bacharach on June 15, 2011 is **ACCEPTED, ADOPTED** and **AFFIRMED**. "Plaintiff['s] Motion for Summary [Judgment] Fed[.] R. Civ. P. 56" (doc. no. 33), filed March 2, 2011, is **OVERRULED**.

3. The Report and Recommendation Regarding the Plaintiff's Motion to Waive Exhaustion of Administrative Remedies (doc. no. 64) issued by United States Magistrate Judge Robert E. Bacharach on June 16, 2011 is **ACCEPTED, ADOPTED**

and **AFFIRMED**. “Plaintiff[’s] Motion for Waiver of Exhaustion Proposition Four” (doc. no. 54), filed May 11, 2011, is **DENIED**.

4. In the Report and Recommendation Regarding the Plaintiff’s Motion to Waive Exhaustion of Administrative Remedies, Magistrate Judge Bacharach stated that the “referral is discharged” and that “if the court adopts the prior reports on the parties’ dispositive motions, the undersigned would suggest recommitment for further proceedings.” *See*, doc. no. 64, p. 2. As the court has accepted, adopted and affirmed the reports on the parties’ dispositive motions, the court **RECOMMITS** this matter to Magistrate Judge Bacharach for further proceedings.

DATED September 8, 2011.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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